

### **REMARKS**

Claims 1-16 were pending in the case at the time of the Office Action, which made a non-final rejection of all claims. Claims 4, 5 and 13-16 are withdrawn from consideration as directed to a non-elected species.

#### **Claim amendments**

New claim 17 is presented, to replace claim 1, which has been cancelled. The claim is directed to “a prosthetic assembly for use between a pair of adjacent vertebrae,” which is clearly supported and is the same preamble used in claim 1.

The assembly has three primary components. The first is “a first base component having a first side adapted for engaging the first of the adjacent vertebrae, and an opposing second side” and the second is similar, being “a second base component having a first side adapted for engaging the second of the adjacent vertebrae, and an opposing second side.” The terminology used for these components is selected to track the terminology used in the specification more closely than in claim 1.

Claim 17 requires that the first sides of each of the base components comprise “at least two raised teeth and at least one inverted frustocone formed thereupon as the vertebra-engaging adaptation.” This language is not in the claims as originally filed, but it is clearly supported in the specification. In reviewing the application for publication, the Patent Office chose to publish Fig. 15 as exemplary. Figure 15 shows two inverted frustocones (22, 24), which are described in the first paragraph of the “Detailed Description” section of the specification as “concentric raised circular portions” with “angled walls” that “taper in the direction toward the plate section.” Applicant respectfully submits that these structures would be readily identifiable as “inverted frustocones.” While Figure 15 shows a pair of concentric inverted frustocones, Figs. 9 and 14 show an embodiment with a single frustocone.

The third component is “a middle component having a first side with a convex portion thereon adapted to engage the concave portion, and an opposing second side.” The second side of the second base component is required to be “adapted to removably

receive the second side of the middle component.” This language is essentially tracking the language of claim 1.

New dependent claim 18 places limitations on the placement of the vertebra-engaging structures, support for which is found at Figs 2, 9 and 14.

New dependent claim 19 further limits claim 18 by requiring a second inverted frustocone, arranged concentrically with the first inverted frustocone.

Dependent claims 9 and 10 are amended to change the limitation “intermediate component” to “middle component,” as the latter term has antecedent basis in independent claim 1. No new matter is presented by this change.

Independent claim 11, directed at a prosthetic kit, is cancelled without prejudice.

Independent claim 12, as well as its withdrawn dependent claims 13-16, is cancelled without prejudice.

Dependent claims 6 and 7 are redundant upon the entry of claim 17, so they are cancelled.

Dependent claims 2-5 and 8-10 are amended to change their dependency from claim 1 to claim 17.

#### Rejections under 35 USC 112

The rejections of claims 9 and 10 for lack of antecedent basis are addressed above and believed to be overcome by the amendments.

#### Rejection under 35 USC §102(b)

The Examiner has rejected claims 1, 2, 6, 7, 11 and 12 as anticipated by WO 00/13619 to Bryan (“Bryan ‘619”).

The Examiner has rejected claims 1-3 and 6-8 as anticipated by WO 94/04100 to Mazda (“Mazda ‘100”).

The Examiner has rejected claims 1-3 and 6-9 and 11 as anticipated by US Patent 5,425,773 to Boyd (“Boyd ‘773”).

The Examiner has rejected claims 1-3, 8 and 10 as anticipated by EP 1 344 508 to Keller (“Keller ‘508”).

Each of these rejections is believed to be overcome by newly-presented independent claim 17. While Mazda ‘100 shows bone-engaging teeth, none of the

references show the bone-engaging inverted frustocones that are now recited in claim 17.

With claim 17 believed to be allowable, dependent claims 2-5 and 8-10 are also believed to be allowable. This includes withdrawn claims 3 and 4, which are directed to a non-elected species, but which are now proper dependent claims.

Conclusion

The Applicant respectfully submits that the present application is now in condition for allowance and such action is earnestly requested.

Respectfully submitted,

Dated: 25 July 2007

By: /Stephen L Grant, Reg No 33390/

Standley Law Group LLP  
495 Metro Place South, Suite 210  
Dublin, Ohio 43017-5315  
Telephone: (614) 792-5555  
Facsimile: (614) 792-5536